

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

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U.S. DISTRICT COURT
DISTRICT OF MASS

BPB, LLC and HOMEBASE
PROPERTIES, LLC d/b/a Munchies',
Plaintiffs.

v.

JOSEPH J. MILLER,
Defendant.

DOCKET NO. 04-30021-MAP

MOTION FOR PRELIMINARY INJUNCTION

Now come the Plaintiffs BPB, LLC and Homebase Properties LLC ("Plaintiffs") and respectfully requests that pursuant to M.R.C.P. 65 and M.G.L. c. 214, §3, this court issue a preliminary injunction ordering the Defendant to take all necessary steps to return the liquor license to the Plaintiff, BPB, LLC. In support hereof, the Plaintiffs state the following:

1. The Defendant's wrongful holding of the liquor license is causing immediate and irreparable harm to the Plaintiff. The Plaintiff cannot sell or operate the established business without the liquor license.
2. Plaintiff has established the likelihood of success on the merits by demonstrating at least a *prima facie* case for each count of its complaint.
3. The Defendant will suffer no irreparable harm when the injunction issues because he holds neither legal title nor license to the use of the property for which the liquor license is issued and therefore cannot use the license in any business venture. The balancing of equities therefore indicates that a preliminary injunction should issue against the Defendant.
4. The Plaintiffs submit the affidavit of Joseph Breault in further support of this Motion for Preliminary Injunction.

In the alternative, the Plaintiffs seek a temporary restraining order against the Defendant restraining him from taking any action to transfer the liquor license to any third party or otherwise taking any actions adverse to the Plaintiffs' right to hold such license. Such actions would cause irreparable injury, loss or damage to the Plaintiff.


Respectfully submitted,

BPB, LLC and HOMEBASE PROPERTIES, LLC
d/b/a Munchies'

Plaintiffs

By Their Attorney

Dated: February 5, 2004



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